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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B6

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: DEC 03 2004

WAC 01 217 55134

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. The director subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed, with instructions for further processing by the director.

The regulation at 8 C.F.R. § 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. If the decision was mailed, 8 C.F.R. § 103.5a(b) allows an additional three days for service by mail, for a total of 18 days. The notice of revocation advised the petitioner of the 18-day deadline. The notice of revocation was mailed on September 19, 2003. The appeal was filed on October 8, 2003, 19 days after the decision was rendered. Thus, the appeal was not timely filed. Counsel acknowledged the untimely filing, submitting the appeal with a "Motion to Accept Late Filing."

Notations in the record indicate that an adjudicator at the California Service Center specified that the appeal should be "accepted as timely." The regulations, however, do not provide for any "motion to accept late filing," nor do they permit the director to accept a late appeal as an appeal.

The regulations do, nevertheless, provide for the consideration of untimely appeals. 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Because the adjudicator clearly determined that the late appeal warranted further adjudication, the correct course of action would have been to treat the late appeal as a motion and adjudicate it at the Service Center.

By regulation, the AAO has no option but to reject the appeal as untimely. This rejection, however, does not preclude the director from treating the late appeal as a motion.

**ORDER:** The appeal is rejected. The record of proceeding is returned to the director for further processing.